



## **POSTAL SERVICE**

### **39 CFR Part 966**

#### **Rules of Practice in Proceedings Relative to Administrative Offsets Initiated Against Former Employees of the Postal Service**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This document revises the rules of practice of the Judicial Officer in proceedings relative to administrative offsets initiated against former employees of the Postal Service. These revisions update the rules to reflect changes in the Postal Service's debt collection regulations and procedures, eliminate outdated provisions, and conform the rules to the Judicial Officer's existing practice.

**DATES:** *Effective date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Administrative Judge Gary E. Shapiro, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078;  
*Telephone:* (703) 812-1900.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Executive Summary:**

The rules of practice in proceedings relative to administrative offsets initiated against former employees of the Postal Service are set forth in 39 CFR part 966. The Postal Service is concurrently revising its regulations pertaining to collecting debts from former employees contained in the Postal Service

Employment and Labor Relations Manual (ELM). These ELM revisions conform existing Postal Service regulations to the requirements of the Debt Collection Act. The revisions in this document will bring 39 CFR part 966 into accord with the Postal Service's revised regulations for collecting debts from former employees by administrative offset. In addition, minor changes will be made to eliminate outdated provisions and conform these rules to the existing practice of the Judicial Officer.

The Postal Service published these proposed changes to 39 CFR part 966 on September 4, 2012 (77 FR 53830-34). No comments were received. The final version of the rule is, accordingly unmodified, with the exception of minor changes to §966.9, intended to be clarifying only.

#### **B. Summary of Changes:**

Changes to § 966.2(a) cross reference the Postal Service's new ELM provisions pertaining to administrative offsets and also clarify that such offsets are taken pursuant to the statutory authority of 31 U.S.C. 3716. Changes to § 966.2(b) clarify that the regulations contained in 39 CFR part 966 are intended to be consistent with the Federal Claims Collection Standards promulgated jointly by the Department of Justice and the Treasury, found at 31 CFR parts 900-904.

Changes to § 966.3 update the definitions of part 966 to refer to the Postal Service Accounting Service Center (ASC) or successor installation instead of the area Postmaster/Installation head. The definition of "reconsideration" in paragraph (i) is thus revised to refer to action taken by the ASC. These changes accurately reflect the Postal Service's current practices for collecting debts from

former employees, as collections from former employees are normally handled through the ASC. Definitions are also updated to include the Federal Claims Collection Standards, referenced elsewhere in the revised regulations. Changes to paragraph (j) are non-substantive and provide the parties with useful contact information.

Changes to § 966.4 revise the procedures for filing a petition for a hearing under part 966. These revisions align these regulations with the Postal Service's revised ELM regulations pertaining to collecting debts from former employees by administrative offset, the Postal Service's current debt collection procedures, and current practice before the Judicial Officer. Paragraphs (a)(2) and (3) are revised to cross reference and incorporate the Postal Service's ELM provisions, as well as the relevant section of the Debt Collection Act, that detail the notice and due process rights former Postal Service employees are afforded prior to the collection of a debt by administrative offset. Changes to these paragraphs clarify that a former employee may petition for review under part 966 either after receiving the required notice and requesting and receiving a reconsideration determination from the ASC, or after requesting reconsideration but not receiving a determination within 60 days from the request. Changes to paragraph (b) detail those situations whereby the Postal Service may take an administrative offset without affording an opportunity for pre-deprivation review to the former employee. In accordance with the Judicial Officer's current practice and applicable law, these changes further clarify that where prior notice and an opportunity for review are omitted and the circumstances outlined in revised

paragraphs (b)(2), (3) and/or (4) do not apply, the former employee may submit a petition for review under part 966 following the offset. Changes to paragraph (c) clarify the procedural time limits for filing a petition for review under revised part 966. In conformance with revisions made elsewhere to part 966, “Accounting Service Center” is substituted for “Postmaster/Installation Head” in paragraph (d)(4). The remaining revisions to paragraph (d) are intended to modernize requirements for the content of hearing petitions.

In § 966.6, paragraph (a) is revised to reflect the Recorder’s correct hours, delete the requirement that parties submit documents in triplicate, and clarify that parties should serve papers directly with each other unless otherwise directed by the Hearing Official. Paragraph (c) explicitly requires that parties discuss extensions of time with the opposing party, as is the current practice. Paragraph (d) clarifies that the General Counsel may delegate cases to a designee and establishes a notice of appearance requirement in order to reduce the possibility of misdirected orders. In addition, paragraph (d) is revised to allow for non-attorney representatives. In current practice, former employees are often represented by non-attorneys.

Section 966.7 is revised to simplify the answer’s content, eliminate the need for the Postal Service’s representative to provide certain information prematurely, and require that the answer clearly explain the basis and calculation of the debt at issue.

Changes to § 966.8(a)(3), (6), and (7) conform the regulations to the existing practice of the Judicial Officer. Changes to § 966.8(a)(9) similarly reflect

the Judicial Officer's existing practice and provide notice to parties that time extensions will not be automatically granted.

Changes to § 966.9 update the regulation to reflect the existing practice of the Judicial Officer pertaining to hearing transcripts, as well as the Hearing Official's ability, in case of a party's unexcused absence, to continue with a hearing at the Hearing Official's discretion. This section is also revised to clarify current practice pertaining to when a Hearing Official may conduct a hearing, as opposed to a decision on the record.

Section 966.11 is revised to provide that the Initial Decision of the presiding Administrative Judge may become the final determination of the Postal Service without any further order by the Judicial Officer, so long as no appeal has been filed and the Judicial Officer has not decided to review the decision on his or her own motion.

Formerly, § 966.12 detailed only circumstances under which the Petitioner could be found in default and administrative offset could thus be initiated. As revised, § 966.12 provides for circumstances under which either party may be found in default. This change is in accordance with existing practice and decisions of the Judicial Officer.

Section 966.13 is revised to reflect more accurately the definition of "ex parte" discussions in the context of proceedings brought under part 966.

Sections 966.5 and 966.10, dealing respectively with the effect of filing a petition, and the initial decision of the Hearing Official, are retained without change.

**C. Effective Dates and Applicability:**

These revised rules will begin to govern proceedings under part 966 docketed on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**List of Subjects in 39 CFR Part 966**

Administrative practice and procedure, claims, Government employees, wages.

For the reasons stated in the preamble, the Postal Service amends 39 CFR part 966 as set forth below:

**PART 966—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO  
ADMINISTRATIVE OFFSETS INITIATED AGAINST FORMER EMPLOYEES  
OF THE POSTAL SERVICE**

1. The authority citation for 39 CFR part 966 is revised to read as follows:

**Authority:** 31 U.S.C. 3716; 39 U.S.C. 204, 401, 2601.

2. Section 966.2 is revised to read as follows:

**§ 966.2 Scope of rules.**

(a) The rules in this part apply to any petition filed by a former postal employee:

(1) To challenge the Postal Service's determination that he or she is liable to the Postal Service for a debt incurred in connection with his or her Postal Service employment, that the Postal Service intends to collect by administrative

offset pursuant to the authority of 31 U.S.C. 3716 and in accordance with the regulations contained in the Employee and Labor Relations Manual, sections 470 and 480; and/or

(2) To challenge the administrative offset schedule proposed by the Postal Service for collecting any such debt.

(b) The regulations in this part are consistent with the provisions of the Federal Claims Collection Standards pertaining to administrative offset.

3. Section 966.3 is revised to read as follows:

**§ 966.3 Definitions.**

(a) *Accounting Service Center* refers to the United States Postal Service Eagan Accounting Service Center or its successor installation.

(b) *Administrative offset* refers to the withholding of money payable by the Postal Service or the United States to, or held by the Postal Service or the United States for, a former employee in order to satisfy a debt determined to be owed by the former employee to the Postal Service.

(c) *Debt* refers to any amount determined by the Postal Service to be owed to the Postal Service by a former employee.

(d) *Federal Claims Collection Standards or FCCS* refers to regulations promulgated by the Department of Justice and the Department of the Treasury and codified at 31 CFR parts 900 through 904.

(e) *Former employee* refers to an individual whose employment with the Postal Service has ceased. An employee is considered formally separated from the Postal Service rolls as of close of business on the effective date of his or her separation.

(f) *General Counsel* refers to the General Counsel of the Postal Service, and includes a designated representative.

(g) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a hearing conducted pursuant to this part.

(h) *Judicial Officer* refers to the Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the Postal Service.

(i) *Reconsideration* refers to the review of an alleged debt and/or the proposed offset schedule conducted by the Accounting Service Center at the request of a former employee alleged to be indebted to the Postal Service.

(j) *Recorder* refers to the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. The recorder’s telephone number is (703) 812-1900, and the Judicial Officer’s Web site is <http://about.usps.com/who-we-are/judicial/welcome.htm>. The fax number is (703) 812-1901.

4. Section 966.4 is revised to read as follows:



**§ 966.4 Petition for a hearing and supplement to petition.**

(a) A former employee who is alleged to be responsible for a debt to the Postal Service may petition for a hearing under this part, provided:

(1) Liability for the debt and/or the proposed offset schedule has not been established under part 452.3 or part 462.3 of the Employee & Labor Relations Manual (ELM);

(2) The former employee has received a Notice from the Accounting Service Center in compliance with section 472.1 of the ELM and the administrative offset provisions of the FCCS, informing the former employee of the debt and an offset schedule to satisfy the debt, the former employee's rights under 31 U.S.C. 3716(a), the right to request reconsideration of the debt and/or offset schedule from the Accounting Service Center, and the right to request review under this part; and

(3) The former employee has requested reconsideration of the Postal Service's determination of the existence or amount of the alleged debt and/or the offset schedule proposed by the Postal Service within thirty (30) calendar days of receiving the notice referenced in paragraph (a)(2), and either has received a reconsideration determination, or within sixty (60) calendar days from the reconsideration request has not received a reconsideration determination.

(b) Notwithstanding the provisions of this part, the Postal Service may omit the procedures for notice and reconsideration in this part under certain circumstances as set forth below:

(1) If the Postal Service first learns of the existence of the amount owed by the former employee when there is insufficient time before payment would be made to the former employee to allow for prior notice and an opportunity for review under this part. When prior notice and an opportunity for review are omitted, the Postal Service will give the former employee notice and an opportunity for review as soon as practicable and will promptly refund any money ultimately found not to have been owed. In such circumstances whereby prior notice and an opportunity for pre-deprivation review are omitted, the former employee may submit a petition for review under this part.

(2) If an agency (including the Postal Service) has already given the former employee any of the required notice and review opportunities set forth in the FCCS with respect to a particular debt. In such a situation, the Postal Service need not duplicate such notice and review opportunities before taking an administrative offset.

(3) If a former bargaining unit employee of the Postal Service pursues, in accordance with the applicable provisions of his or her CBA, a grievance concerning the Postal Service's claim, including, but not limited to, the existence of a debt owed to the Postal Service, the amount of such debt, and/or the proposed repayment schedule, and none of the circumstances set forth in ELM section 483.1 apply;

(4) If otherwise allowed by law, including, but not limited to, the administrative offset provisions of the FCCS.

(c) Within thirty (30) calendar days after the date of receipt of the Accounting Service Center's decision upon reconsideration, after the expiration of sixty (60) calendar days after a request for reconsideration where a reconsideration determination is not made, or following an administrative offset taken without prior notice and opportunity for reconsideration pursuant to paragraph (b)(1) of this section, the former employee must file a written, signed petition, requesting a written or oral hearing, with the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(d) The petition must include the following:

(1) The words, "Petition for Review Under 39 CFR Part 966";

(2) The former employee's name;

(3) The former employee's home address, email address (if available), and telephone number, and any other address and telephone number at which the former employee may be contacted about these proceedings;

(4) A statement of the date the former employee received the Accounting Service Center's decision upon reconsideration of the alleged debt and a copy of the decision;

(5) A statement of the grounds upon which the former employee objects to the Postal Service's determination of the debt or to the administrative offset schedule proposed by the Postal Service for collecting any such debt. This statement should identify with reasonable specificity and brevity the facts,

evidence, and legal arguments, if any, which support the former employee's position; and

(6) Copies of all records in the former employee's possession which relate to the debt and which the former employee may enter into the record of the hearing.

(e) The former employee may, if necessary, file with the Recorder additional information as a supplement to the petition at any time prior to the filing of the answer to the petition under § 966.7, or at such later time as permitted by the Hearing Official upon a showing of good cause.

5. Section 966.6 is revised to read as follows:

**§ 966.6 Filing, docketing and serving documents; computation of time; representation of parties.**

(a) *Filing.* All documents required under this part must be filed by the former employee or the General Counsel with the Recorder. (The Recorder's normal business hours are between 8:45 a.m. and 4:45 p.m., eastern standard or daylight saving time as appropriate during the year.) Unless otherwise directed by the Hearing Official, the party filing any document shall send a copy thereof to the opposing party.

(b) *Docketing.* The Recorder will maintain a docket record of proceedings under this part and will assign each petition a docket number. After notification of the docket number, the former employee and General Counsel should refer to it on any further filings regarding the petition.

(c) *Time computation.* A filing period under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day. Requests for extensions of time shall be made in writing stating good cause therefor, shall represent that the moving party has contacted the opposing party about the request, or made reasonable efforts to do so, and shall indicate whether the opposing party consents to the extension.

(d) *Representation of parties.* After the filing of the petition, further document transmittals for, or communications with, the Postal Service shall be through its representative, the General Counsel, or designee. The representative of the Postal Service, as designated by the General Counsel, shall file a notice of appearance as soon as practicable, and no later than the date for filing the answer. If a former employee has a representative, further transmissions of documents and other communications by and with the former employee shall be made through his or her representative rather than directly with the former employee.

6. Section 966.7 is revised to read as follows:

**§ 966.7 Answer to petition.**

Within thirty (30) days after the date of receipt of the petition, the General Counsel shall file an answer to the petition, and attach all available relevant records and documents in support of the Postal Service's claim, or the

administrative offset schedule proposed by the Postal Service for collecting any such claim. The answer shall provide a clear and detailed description of the basis for the Postal Service's determination of the alleged debt and its calculation of the amount of the alleged debt and/or its proposed offset schedule, as appropriate.

7. Section 966.8 is revised to read as follows:

**§ 966.8 Authority and responsibilities of Hearing Official or Judicial Officer.**

(a) In processing a case under this part, the Hearing Official's authority includes, but is not limited to, the following:

(1) Ruling on all offers, motions, or requests by the parties;

(2) Issuing any notices, orders, or memoranda to the parties concerning the hearing procedures;

(3) Conducting telephone conferences with the parties to expedite the proceedings (a memorandum of a telephone conference will be transmitted to both parties). The Hearing Official's Memorandum of Telephone Conference serves as the official record of that conference;

(4) Determining if an oral hearing is necessary, the type of oral hearing that would be appropriate, and setting the place, date, and time for such hearing;

(5) Administering oaths or affirmations to witnesses;

(6) Conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable, and probative evidence is elicited

on the disputed issues, and that irrelevant, immaterial, or repetitious evidence is excluded. The Hearing Official in his or her discretion may examine witnesses to ensure that a satisfactory record is developed;

(7) Establishing the record in the case. Except as the Hearing Official may otherwise order in his or her discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the written record, after notification by the Hearing Official that the case is ready for decision. The weight to be attached to any evidence of record will rest within the sound discretion of the Hearing Official. The Hearing Official may require either party, with appropriate notice to the other party, to submit additional evidence on any relevant matter;

(8) Issuing an initial decision or one on remand; and

(9) Granting reasonable time extensions or other relief for good cause shown.

(b) The Judicial Officer, in addition to possessing such authority as is described elsewhere in this part, shall possess all of the authority and responsibilities of a Hearing Official.

8. Section 966.9 is revised to read as follows:

**§ 966.9 Opportunity for oral hearing.**

An oral hearing shall be held in the sole discretion of the Hearing Official. An oral hearing includes an in-person hearing, a telephonic hearing, or a hearing by video conference. When the Hearing Official determines that an oral hearing

shall not be conducted, the decision shall be based solely on written submissions. The Hearing Official shall arrange for the recording and transcription of an oral hearing, which shall serve as the official record of the hearing. The unexcused absence of a party at the time and place set for hearing may not be occasion for delay at the discretion of the Hearing Official. In the event of such absence, the hearing may proceed without the participation of the absent party.

9. Section 966.11 is revised to read as follows:

**§ 966.11 Appeal.**

The initial or tentative decision will become the final agency decision thirty (30) days after its issuance unless, before the expiration of that time, a party files an appeal with the Judicial Officer, or the Judicial Officer, in his or her sole discretion, elects to conduct a review of the decision on his or her own initiative. During such review or appeal consideration, the Judicial Officer will accept all findings of fact in the original decision unless clearly erroneous. If following appeal or review, the Judicial Officer affirms the original decision, that decision becomes the final agency decision with no further right of appeal within the agency.

10. Section 966.12 is revised to read as follows:

**§ 966.12 Waiver of rights.**

(a) The Hearing Official may determine that the former employee has waived the right to a hearing, and that administrative offset may be initiated if the



former employee files a petition for hearing after the period prescribed in these Rules and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay; or has filed a withdrawal of the former employee's previous petition for a hearing.

(b) The Hearing Official may determine that the Postal Service has waived the alleged debt at issue, and that the administrative offset may not be initiated if the Postal Service fails to file the answer within the period prescribed by the Rules and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay; or has filed a withdrawal of the debt determination at issue.

(c) In addition, whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Hearing Official, comply with orders of the Hearing Official, participate in conferences, fail to treat the proceedings with the proper decorum, or otherwise indicate an intention not to continue the prosecution or defense of a petition, the Hearing Official may issue an order requiring the offending party to show cause why the petition should not be dismissed or granted, as appropriate. If the offending party shall fail to show cause, the Hearing Official may take such action as he or she deems reasonable and proper under the circumstances, including dismissal or granting of the petition as appropriate.

11. Section 966.13 is revised to read as follows:

**§ 966.13 Ex parte communications.**

Ex parte communications are not allowed between a party and the Hearing Official or the Official's staff. For these purposes, ex parte communication means an oral or written communication, not on the public record, with one party only with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

*[FR Doc. 2012-26248 Filed 10/24/2012 at 8:45 am; Publication Date:  
10/25/2012]*